

**Minutes of Meeting
BOARD FOR CONTRACTORS
INFORMAL FACT-FINDING CONFERENCES
June 15, 2004 (9:00 a.m.)**

The Board for Contractors convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Robert M. Kirby, Board member, presided. No other Board members were present.

Jennifer Kazzie appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD. and the Summaries or Consent Orders are attached unless no decision was made.

Disc = Disciplinary Case
Lic = Licensing Application
RF = Recovery Fund Claim
Trades = Tradesmen Application

C = Complainant/Claimant
A = Applicant
R = Respondent/Regulant
W = Witness
Atty = Attorney

Participants

- | | |
|--|--|
| 1. Thomas W. Taylor
File Number 2003-01079 (Disc) | None |
| 2. Richard Allen Bush
File Number 2004-01027 (Disc) | John Crockett - C |
| 3. M & I Enterprises Inc.
t/a D & D Mechanical Contractors
File Number 2003-02100 (Disc) | None |
| 4. Quick International Awning & Signs Inc.
t/a Quick Signs
File Number 2004-00437 (Disc) | Ben Biroonak – R |
| 5. Paul Kirby Sr.
t/a P F Kirby and Son
File Number 2003-01897 (Disc) | Paul Kirby Sr. – R
Jonathan and Kelly Lee – C |
| 6. Moore Paving Inc.
File Number 2004-00526 (Disc) | W. David Moore – R
Rachel Garcia – C |
| 7. Van Caffi Plumbing & Heating Inc. | Ron Caffi – R |

DRAFT

The meeting adjourned at 3:40 p.m.

BOARD FOR CONTRACTORS

Mark D. Kinser, Chairman

Louise Fontaine Ware, Secretary

COPY TESTE:

Custodian of Records

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: THOMAS W. TAYLOR
LICENSE NUMBER: 2705 066856**

FILE NUMBER: 2003-01079

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 15, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Thomas W. Taylor, on May 12, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Robert M. Kirby, presiding Board Member. Neither Taylor, nor anyone on his behalf, appeared at the IFF.

Background

On October 15, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Carolan Overton (Overton) regarding a contract entered into with Thomas W. Taylor (Taylor).

On September 24, 2002, Overton entered into a verbal agreement with Taylor to perform roof repair work at 2209 Nelson Street, Richmond, Virginia. After the work was completed Overton and Taylor agreed on a price of \$875.00.

Summation of Facts

1. Taylor failed to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

Taylor's failure to make use of a written contract which contains the minimum requirements is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend that a monetary penalty of \$500.00 be imposed. In addition, I recommend Taylor successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 066856 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: RICHARD ALLEN BUSH
LICENSE NUMBER: 2705 074695**

FILE NUMBER: 2004-01027

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 15, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Richard Allen Bush, on May 14, 2004. The following individuals participated at the conference: John Crockett, Complainant; Jennifer Kazzie, Staff Member; and Robert M. Kirby, presiding Board Member. Neither Bush, nor anyone on his behalf, appeared at the IFF.

Background

On August 29, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from John D. Crockett (Crockett) regarding a contract entered into with Richard Allen Bush (Bush).

On March 20, 2003, Crockett entered into a written contract with Allen Bush, in the amount of \$13,850.00, to build a 15 x 22 room addition and a 10 x 15 deck at 16447 Courthouse Road, Eastville, Virginia.

On or about April 1, 2003, Bush commenced work at the subject property.

On September 2, 2003, a review of the licensing records for the Board for Contractors revealed Bush was issued Class C Contractor's license number 2705074695 on February 19, 2003, as a sole proprietor.

Summation of Facts

1. Bush failed to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license.

2. The contract used by Bush in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, and (h) contractor's address, license number, expiration date, class of license, and classifications or specialty services.
3. In June 2003 and July 2003, Crockett left messages for Bush to inquire about work completion. Bush failed to respond to Crockett.
4. On July 21, 2003, Crockett sent a letter to Bush outlining recommendations for completion of the project; however, the letter was returned as not deliverable.
5. On July 28, 2003, Crockett hand delivered the letter dated July 21, 2003, to Bush, which Bush signed upon receipt.
6. The last day Bush worked on the subject property was July 28, 2003.
7. On August 18, 2003, Crockett sent Bush a letter requesting Bush finish the work within fifteen (15) days.
8. As of November 4, 2003, Bush failed to complete the following:
 - a. deck not installed,
 - b. room addition not completed, including framing, electrical, and plumbing, and
 - c. final inspection not completed.
9. On March 20, 2003, Crockett paid Bush \$1,000.00 by check. On April 11, 2003, Crockett paid Bush \$2,000.00 by check. On April 28, 2003, Crockett paid Bush \$1,500.00 by check. On June 3, 2003, Crockett paid Bush 6,000.00.
10. On August 18, 2003, Crockett sent Bush a letter requesting a full refund of all monies paid if the work was not finished within fifteen (15) days.
11. In August 2003, Crockett filed a Warrant in Debt against Bush.
12. On September 30, 2003, Investigator Shelby Smith-Hill, the Board's agent, made a written request to Bush at the address of record of 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075, requesting a written response and supporting documents to the complaint filed with the Board. The Board's agent requested the documents be received by October 16, 2003.
13. On October 23, 2003, the Highland Springs Postmaster certified that mail was delivered to Bush at 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075.
14. On October 24, 2003, and November 3, 2003, the Board's agent attempted to contact Bush at (757) 621-1021 and left messages, with negative results.

15. On November 24, 2003, the Board's agent visited 123 N. Maple Leaf Avenue, Highland Springs, Virginia 23075 and observed the location was a residence. The Board's agent left a business card in the mailbox, which requested Bush contact the Board's agent as soon as possible regarding the complaint filed with the Board.

16. As of March 26, 2004, Bush refused or failed to respond to the Board's agent.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(27) (Effective January 1, 2003)

Bush's failure to obtain a Class B license in order to perform work in excess of the \$7,500.00 limit of a Class C license is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed. In addition, I recommend Bush successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

Bush's failure to make use of a written contract that contains the minimum requirements is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed. In addition, I recommend Bush successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(14) (Effective January 1, 2003)

Bush's unjustified cessation of work under the contract for a period of 30 days or more is a violation of Board Regulation 18 VAC 50-22-260(B)(14). Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 4: 18 VAC 50-22-260(B)(16) (Effective January 1, 2003)

Bush's retention or misapplication of funds paid, for which work is either not performed or performed only in part is a violation of Board Regulation 18 VAC 50-22-260(B)(16). Therefore, I recommend that a monetary penalty of \$2,500.00 and license revocation be imposed.

Count 5: 18 VAC 50-22-260(B)(13) (Effective January 1, 2003)

Bush's failure to respond to an investigator seeking information in the investigation of a complaint filed with the board is a violation of Board Regulation 18 VAC 50-22-260(B)(13). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed. In addition, I recommend Bush successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 074695 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: M & I ENTERPRISES, INC.
T/A D & D MECHANICAL CONTRACTORS
LICENSE NUMBER: 2705 047598**

FILE NUMBER: 2003-02100

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 15, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to M & I Enterprises, Inc., t/a D & D Mechanical Contractors, on May 7, 2004. The following individuals participated at the conference: Jennifer Kazzie, Staff Member; and Robert M. Kirby, presiding Board Member. No one from M & I Enterprises, Inc., t/a D & D Mechanical Contractors appeared at the IFF.

Background

On January 29, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Dale and Paula Wilfong (the Wilfongs) regarding work performed by M & I Enterprises Inc. (M & I), t/a D & D Mechanical Contractors.

In September 2002 and October 2002, the Wilfongs received a verbal estimate from M & I, in the amount of \$5,600.00 and an additional \$350.00 for a humidifier, for work to be performed at 2223 Airport Road, Bridgewater, Virginia. The Wilfongs verbally accepted the bid.

On October 4, 2002, the Wilfongs received a written contract from M & I, in the amount of \$5,600.00, to install a heating system at 2223 Airport Road, Bridgewater, Virginia. The contract was not signed by either the Wilfongs or M & I.

In late November 2002, M & I commenced work on the project.

Summation of Facts

1. M & I failed to fully execute a written contract prior to commencement of work.
2. The contract used by M & I in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (d) a "plain-language" exculpatory clause, (e) a statement of assurance regarding local requirements for inspections and zoning, (f) disclosure of cancellation rights, (h) contractor's address, license expiration date, class of license, and classifications or specialty services, and (i) statement providing that any modification to the contract which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(8) (Effective September 1, 2001)

M & I's failure to fully execute a written contract prior to commencement of work is a violation of Board Regulation 18 VAC 50-22-260(B)(8). Therefore, I recommend that a monetary penalty of \$500.00 be imposed. In addition, I recommend a member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

M & I's failure to make use of a written contract that contains the minimum requirements is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$300.00 be imposed. In addition, I recommend a

member of responsible management successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 047598 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: QUICK INTERNATIONAL AWNING & SIGN, INC.
T/A QUICK SIGNS
LICENSE NUMBER: 2705 052711**

FILE NUMBER: 2004-00437

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 15, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Quick International Awning & Sign, Inc., on May 11, 2004. The following individuals participated at the conference: Ben Biroonak,

Vice President of Quick International Awning & Sign, Inc., t/a Quick Signs, Respondent; Jennifer Kazzie, Staff Member; and Robert M. Kirby, presiding Board Member.

Background

On July 18, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received information from Virginia Clarke (Clarke), Supervisory Administrative Officer for the City of Alexandria Code Enforcement, regarding Quick International Awning & Signs Inc., t/a Quick Signs (Quick Signs).

On June 5, 2003, Clarke issued a Stop Work Order to Quick Signs for performing work at 1104 Queen Street, Alexandria, Virginia without the appropriate sign permit as required by Section 109.1 of the Uniform Statewide Building Code (USBC).

On June 12, 2003, Quick Signs submitted a sign application for the installation of wooden signage over a store front at the subject property.

Summation of Facts

1. Mr. Biroonak presented evidence at the IFF of a receipt from the City of Alexandria dated May 14, 2003. The receipt was for a Board of Architectural review. This review was necessary before obtaining an actual building permit.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(6) (Effective January 1, 2003) (failure to obtain required permits prior to performing work)

The act of installing the sign prior to receipt of a permit appears to be an administrative oversight on the part of Quick Signs. Quick Signs had obviously begun the necessary administrative process prior to commencement of sign installation. Therefore, I recommend that this count of the file be closed with a finding of no violation.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 052711 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION
BOARD FOR CONTRACTORS**

**RE: PAUL KIRBY, SR.
T/A P. F. KIRBY AND SON
LICENSE NUMBER: 2705 015457**

FILE NUMBER: 2003-01897

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on March 9, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Paul Kirby, Sr., t/a P. F. Kirby and Son (Kirby), on November 21, 2003. By letter sent by facsimile on February 25, 2004, Kirby requested that the case be continued. On March 1, 2004, Kirby was notified that his request was granted and the case was continued. The following individuals participated at the conference on March 9, 2004: Jonathan Lee, Complainant; Jennifer Kazzie, Staff Member; Robert M. Kirby, presiding Board Member.

By letter dated March 19, 2004, Kirby was notified that the IFF would re-convene on June 15, 2004. The following individuals participated at the conference on June 15, 2004: Paul Kirby, Sr., Respondent; Jonathan and Kelly Lee, Complainants; Joseph D. Kirby, Witness; Jennifer Kazzie, Staff Member; and Robert Kirby, presiding Board Member.

Background

On July 29, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Jonathan R. Lee (Lee) regarding Paul Kirby Sr. (Kirby Sr.), t/a P F Kirby and Son, and Rollie B. Kirby (Kirby).

In October 2001, Lee received a proposal from Kirby and Son LLC, in the amount of \$125,000.00, for the construction of a two story addition with a wrap around porch at 565 Black Cat Road, Keswick, Virginia. The contract was signed for by Rollie Kirby and Frank Kirby. Lee accepted the proposal and signed the contract on October 7, 2001.

In October 2001, Kirby Sr. commenced work. Between December 2001 and January 2002, Lee paid Kirby Sr. a total of \$82,190.00 towards the contract. In January 2002, Kirby Sr. completed the work.

On November 5, 2002, a review of the licensing records of the Board for Contractors revealed Kirby Sr. was issued Class B Contractor's license number 2705015457 on February 19, 1993. The records further revealed Frank Kirby was the Qualified Individual, Designated Employee, and Responsible Management for license number 2705015457.

On November 5, 2003, a review of the licensing records of the Board for Contractors revealed Kirby was issued Class A Contractor's license number 2701015406 on July 9, 1976. The records further revealed Rollie Kirby was the Qualified Individual, Designated Employee, and Responsible Management for license number 2701015406.

Summation of Facts

1. Kirby Sr. failed to operate in the name in which the license was issued.
2. Kirby Sr. failed to obtain a Class A license in order to perform work in excess of the \$70,000.00 limit of a Class B license.
3. The contract used by Kirby Sr. failed to contain all the minimum provisions required by the Board's 2001 Regulation 18 VAC 50-22-260(B)(9), subsections (a) when work is to begin and the estimated completion date, (b) a statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment, (c) a listing of specified materials and work to be performed which is specifically requested by the consumer, (d) a "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance, (e) a statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning, (f) disclosure of the cancellation rights of the parties, (h) contractor's license number, expiration date, class of license/certificate, and classification or specialty services, and (i) statement providing that any modification to the contract, which changed the cost, materials,

work to be performed, or estimated completion date, must be in writing and signed by all parties.

4. Kirby Sr. performed additional work and upgraded doors, plumbing fixtures, decking, staircase and completion of upstairs, which increased the cost of the project. Kirby failed to use written change orders, signed by all parties, for these modifications to the original contract.

5. Kirby Sr. advised Investigator Janet Creamer, the Board's agent, that Kirby allowed Kirby Sr. to use Kirby's Class A license to enter into the contract with Lee because Kirby Sr. only had a Class B license. Kirby Sr. also advised the Board's agent that Kirby Sr. applied for the building permit and told the Albemarle County employee that Kirby Sr. was using Kirby's Class A license since it was over \$70,000.00.

6. On October 16, 2001, Kirby Sr. applied for a building permit for work to be performed at 565 Black Cat Road, Keswick, Virginia. The application originally indicated Kirby Sr. as the contractor; however, Kirby Sr. was scratched out and the contractor was changed to Kirby. The application indicated license number A 015406. On October 17, 2001, building permit number 2001-01638AR was issued.

7. On January 15, 2003, Kirby admitted that he signed the contract because Kirby Sr.'s license did not allow Kirby Sr. to perform jobs over a certain amount. Kirby further admitted that he did not perform any work on the Lee project. Kirby allowed his Class A Contractor's license to be used by Kirby Sr.

8. During the June 15, 2004 IFF, Kirby Sr. testified that Kirby and Son, LLC is the name under which he operates in the state of Maryland. Kirby Sr. further stated that this entity is not registered with the State Corporation Commission.

9. During the June 15, 2004 IFF, Kirby Sr. testified that all parties involved in the Lee contract were aware that Kirby Sr. was using Kirby's license in order to perform work in excess of the \$70,000.00 limit of Kirby Sr.'s Class B license.

10. Kirby Sr. testified at the June 15, 2004 IFF that he has not updated his contract to include the minimum provisions specified in the Board's Regulations.

11. During the June 15, 2004 IFF, Kirby Sr. testified that while performing work at Lee's residence, Kirby Sr. never made use of written change orders and that all of the modifications to the existing contract were verbal agreements between Kirby Sr. and Lee.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Kirby's failure to operate in the name in which the license was issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, I recommend that a monetary penalty of

\$500.00 be imposed for a violation of this regulation. In addition, I recommend that Kirby Sr. successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-260(B)(27) (Effective September 1, 2001)

Kirby's failure to obtain a Class A license in order to perform work in excess of the \$70,000.00 limit of a Class B license is a violation of Board Regulation 18 VAC 50-22-260(B)(27). Therefore, I recommend that a monetary penalty of \$1,000.00 be imposed for a violation of this regulation. In addition, I recommend that Kirby, Sr. successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Kirby's failure to make use of a written contract which contains the minimum provisions required by the Board's Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$400.00 be imposed for a violation of this regulation. In addition, I recommend that Kirby Sr. successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 4: 18 VAC 50-22-260(B)(31) (Effective September 1, 2001)

Kirby's failure to obtain written change orders, signed by all parties, for modifications to the original contract is a violation of Board Regulation 18 VAC 50-22-260(B)(31). Therefore, I recommend that a monetary penalty of \$500.00 be imposed for a violation of this regulation. In addition, I recommend that Kirby Sr. successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 5: 18 VAC 50-22-260(B)(18) (Effective September 1, 2001)

Kirby's actions of assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter is a violation of Board Regulation 18 VAC 50-22-260(B)(18). Therefore, I recommend that a monetary penalty of \$1,500.00 be imposed for a violation of this regulation. In addition, I recommend that Kirby Sr. successfully complete the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

By:

Robert M. Kirby
Presiding IFF Board Member
Board for Contractors

Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2705 015457 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**IN THE
COMMONWEALTH OF VIRGINIA
BOARD FOR CONTRACTORS**

In Re:

Moore Paving Inc, t/a Moore Paving Inc
Richmond, VA 23237

File Number 2004-00526
License Number 2705062750

CONSENT ORDER

Respondent Moore Paving Inc, t/a Moore Paving Inc ("Moore Paving Inc") was at all times material to this matter a licensed Class B Contractor in Virginia (No. 2705062750).

As a result of this status, Moore Paving Inc recognizes and acknowledges being subject to and bound by the Regulations of the Board for Contractors ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on June 15, 2004, in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Richmond, Virginia and was attended by W. David Moore, on behalf of Moore Paving Inc., Respondent; Rachel Garcia, Complainant; Jennifer Kazzie, Staff Member. Board Member Robert M. Kirby presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

Background

On July 28, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Rachel Garcia (Garcia) regarding work performed by Moore Paving Inc. (Moore Paving).

On January 14, 2002, Garcia entered into a written contract with Moore Paving Company, in the amount of \$2,520.00, to install a driveway at 1700 Robindale Court, Richmond, Virginia 23235. The contract was signed for by Walter D. Moore.

On July 30, 2003, a review of the licensing records of the Board for Contractors revealed Moore Paving was issued Class B Contractor's license number 2705062750 on September 27, 2001, as a corporation. On December 15, 2003, a review of the licensing records revealed Walter David Moore (Moore) as the Designated Employee, Qualified Individual, and Responsible Manager of Moore Paving.

Summation of Facts

1. The contract used by Moore Paving in the transaction failed to contain subsections: (a) when the work is to begin and the estimated completion date, (e) statement of assurance regarding local requirements for building permits, inspections and zoning, (f) disclosure of cancellation rights, and (h) contractor's license number, expiration date, class of license/certificate, and classification or specialty services.
2. Moore Paving failed to operate in the name in which the license was issued.
3. On January 14, 2002, Moore Paving paved the driveway at the subject property.
4. The contract specified "24 month guarantee under normal use".
5. In October 2002, Garcia noticed problems with the driveway paved by Moore Paving. Moore Paving performed some repairs, but left a crack in the walkway for repair after a tree was removed.
6. In April 2003, Garcia noticed weeds growing through holes in the driveway, and contacted Moore Paving several times about the walkway repair. Moore Paving called Garcia and verbally promised to repair the driveway during the first week of June 2003. After ten (10) days of no action by Moore Paving, Garcia attempted to contact Moore Paving; however the phone was disconnected.
7. On August 6, 2003, Garcia noticed the sides of the driveway had holes with weeds growing through two (2) cracks in the driveway.

8. Moore Paving failed to repair the driveway after making a verbal promise.
9. On December 15, 2003, Investigator Janet Creamer, the Board's agent, sent a written request to Moore at 13817 Village Mill Drive, Midlothian, Virginia 23113, requesting a written response and supporting documents to the complaint filed with the Board. On December 22, 2003, the letter was returned by the United States Postal Service and was marked "insufficient address."
10. On January 15, 2004, a review of the licensing records of the Board for Contractors revealed Moore Paving's address of record was 13817 Village Mill Drive, Midlothian, Virginia 23113.

The Board and Moore Paving Inc, as evidenced by the signatures affixed below, enter into this Consent Order. Moore Paving Inc knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, Moore Paving Inc acknowledges an understanding of the charges. Moore Paving Inc hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

Count 1: 18 VAC 50-22-260(B)(9) (Effective September 1, 2001)

Moore Paving's failure to make use of a written contract which contains the minimum provisions specified in the Board's Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, a monetary penalty of \$100.00 shall be imposed. However, the monetary penalty will be waived upon Moore's successful completion of the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 2: 18 VAC 50-22-230(A) (Effective September 1, 2001)

Moore Paving's failure to operate under the name in which the license is issued is a violation of Board Regulation 18 VAC 50-22-230(A). Therefore, a monetary penalty of \$100.00 shall be imposed. However, the monetary penalty will be waived upon Moore's successful completion of the Board's Basic Contractor Licensing Class (remedial education) within six months of the entry of the order.

Count 3: 18 VAC 50-22-260(B)(6) (Effective January 1, 2003)

Moore Paving's failure to repair the driveway after making a verbal promise to do so constitutes misconduct in the practice of contracting and is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, a monetary penalty of \$500.00 shall be imposed. However, the monetary penalty will be waived upon Moore completing the necessary repairs of the driveway and providing proof of satisfaction within 90 days of the entry of the order.

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. Moore Paving Inc acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Moore Paving Inc will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia, as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

Moore Paving Inc acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Moore Paving Inc's license until such time as there is compliance with all terms of this Order. Moore Paving Inc understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§ 2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§ 2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

Moore Paving Inc
t/a Moore Paving Inc

Date

Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this _____ day of _____, 2004.

Notary Public

My Commission Expires: _____

SO ORDERED:

Entered this _____ day of _____, 2004.

Board for Contractors

BY: _____
Louise Fontaine Ware, Secretary

**COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

BOARD FOR CONTRACTORS

**RE: VAN CAFFI PLUMBING & HEATING INC.
LICENSE NUMBER: 2701 009630**

FILE NUMBER: 2004-03201

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on June 15, 2004, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Ron Caffi, Jr., of Van Caffi Plumbing & Heating, Inc., on May 17, 2004. The following individuals participated at the conference: Ron Caffi, Jr., on behalf of Van Caffi Plumbing & Heating, Inc., Respondent; Sayuri Inoue, Complainant; Jennifer Kazzie, Staff Member; and Robert Kirby, presiding Board Member.

Background

On February 6, 2004, the Enforcement Division of the Department of Professional and Occupational Regulation received a written complaint from Virginia Clarke (Clarke), Administrative Officer for the City of Alexandria Code Enforcement Office, regarding Van Caffi Plumbing & Heating Inc. (Van Caffi).

On November 26, 2003, Sayuri Inoue (Inoue) entered into a written contract with Van Caffi, in the amount of \$13,382.00, to renovate a kitchen and replace flooring at 1119 Powhatan Street, Alexandria, Virginia.

On December 1, 2003, Van Caffi commenced work, which included removing the cabinets, countertops, and appliances for the waterproofing company. On December 5, 2003, the waterproofing company commenced work. In mid December 2003, Van Caffi resumed work.

On March 19, 2004, a review of the licensing records for the Board for Contractors revealed Van Caffi was issued Class A Contractor's license number 2701009630 with the building contractor (BLD) and plumbing contractor (PLB) classifications and the gas fitting contracting (GFC) specialty.

Summation of Facts

1. The contract used by Van Caffi in the transaction failed to contain subsections: (a) when work is to begin and the estimated completion date, (e) a statement of assurance regarding local requirements for building permits, inspections and zoning, and (f) disclosure of cancellation rights.
2. On February 25, 2004, Van Caffi obtained after-the-fact building permit number BLD2004-00508, after-the-fact plumbing permit number PLM2004-00217, and after-the-fact mechanical permit number MEC2004-00340 for work performed at the subject property.
3. In a written response dated March 8, 2004, Van Caffi admitted it “recognizes this failure and though negligent in obtaining the permit prior to start of work, Caffi Plumbing has acquired Building, Mechanical, and Plumbing permits for the work.”
4. Van Caffi failed to obtain required permits for redirecting gas lines, removing drywall to conceal gas lines, and installing new electrical outlets.
5. Van Caffi installed 36” kitchen cabinets, which did not allow for closure of the kitchen window. Van Caffi put the window down as far as it would go, inserted some plywood, and then sealed the bottom of the window with some type of sealer to the plywood.
6. Inoue had to stuff the window with plastic bags to seal the draft.
7. When Inoue notified Van Caffi of the problem, Van Caffi told Inoue that for an additional cost, Van Caffi could install a new window or brick up the existing window.
8. During the IFF, Ron Caffi (Caffi) testified that the contract used on the Inoue project did not include the start date and estimated completion date because Inoue was acting as general contractor and that the start and completion dates were “out of our control.” Caffi further stated that he believed that the clause on page two of the contract which includes the words “All work to be completed in a workmanlike manner according to standard practices” encompasses the statement of assurance regarding local requirements for building permits. Caffi further stated that he believed that term number seven on page two of the contract includes the required disclosure of cancellation rights.
9. During the IFF, Caffi testified that he did not believe that a building permit was required prior to commencement of work on the subject property. He further stated that Van Caffi’s failure to obtain the required mechanical and plumbing permits was “an oversight.”
10. During the IFF, Caffi testified that the reason the windows in the kitchen do not close properly is that the wall which contains the windows is temporary and that, upon request from Inoue, Van Caffi will return to the property to complete the work.

Conclusion and Recommendation

Count 1: 18 VAC 50-22-260(B)(9) (Effective January 1, 2003)

Van Caffi's failure to make use of a written contract which contains the minimum provisions specified in the Board's Regulations is a violation of Board Regulation 18 VAC 50-22-260(B)(9). Therefore, I recommend that a monetary penalty of \$50.00 be imposed. Based upon the record and the information presented at the IFF, I believe that subsection "e" of 18 VAC 50-22-260(B)(9) is not included in Van Caffi's contract.

Count 2: 18 VAC 50-22-260(B)(6) (Effective January 1, 2003)

Van Caffi's failure to obtain the required permits prior to the commencement of work constitutes misconduct in the practice of contracting and is a violation of Board Regulation 18 VAC 50-22-260(B)(6). Therefore, I recommend that a monetary penalty of \$100.00 be imposed.

Count 3: 18 VAC 50-22-260(B)(5) (Effective January 1, 2003)(Van Caffi's action of installing the kitchen cabinets in such a manner that did not allow for the kitchen window to close)

Based upon the record and the information presented at the IFF, I believe that the contract clearly indicated that the new cabinets would cause the window closure to be concealed behind the counter-top. No provisions were made within the contract for modification to the windows. Therefore, I recommend that this count of the file be closed with a finding of no violation.

By:

Robert Kirby
Presiding IFF Board Member
Board for Contractors
Date: _____

FINAL ORDER RECOMMENDATION

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 2701 009630 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

DRAFT